

Qwest

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Theresa Jensen

Director - Washington Regulatory Affairs
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Via Overnight Delivery

March 15, 2002

Ms. Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S. W.
P. O. Box 47250
Olympia, WA 98504-7250

RE: Qwest Agreements with CLECs

Dear Ms. Washburn:

Enclosed is background information regarding a complaint proceeding in Minnesota in which the State Department of Commerce ("DOC") has alleged that certain provisions of eleven agreements between Qwest and Competitive Local Exchange Carriers ("CLECs") should have been filed for the prior approval of the Minnesota Public Utility Commission. Qwest vigorously disputes the DOC's allegations.

The Telecommunications Act does not require every provision of every ILEC-CLEC contract to be filed for Commission approval. The DOC agrees, and is complaining about only certain selected contract provisions entered into between Qwest and Minnesota CLECs since the start of 2000. The DOC's complaint presents an important legal question: where is the line drawn between (i) key terms and conditions of interconnection that must be filed for prior Commission approval under Section 252 of the Federal Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall within this mandatory filing requirement?

Qwest recognizes that sometimes its negotiations with CLECs will result in new interconnection terms and conditions implicating Section 251 of the Act, in which case contracts or contract amendments are filed with a state Commission. However, other times the negotiations may resolve past disputes, or result in contract arrangements that do not create Commission filing obligations. Qwest has exercised good faith in deciding when a particular contract arrangement with a CLEC requires Commission filing and prior approval, and when it does not. Qwest believes that the judgements it made in this area complied with the Act.

The provisions at issue in the complaint filed in Minnesota fall into four general categories:

- ***Agreements that define business-to-business administrative procedures at a granular level.*** Many of the provisions cited by the DOC involve business processes that go well beyond the level of detail that Section 252 of the Act requires to be filed in an interconnection agreement. For example, Qwest has agreed to meetings and similar administrative processes to review business questions and concerns.
- ***Agreements to settle disputes.*** Other provisions are included in agreements that settled ongoing disputes between the parties. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. Section 252 does not require that such settlements be filed as interconnection agreements and approved by the state commission.
- ***Agreements implementing Commission orders.*** In at least one provision, the DOC complained about provisions where Qwest simply commits to comply with the Minnesota Commission's orders pending further proceedings.
- ***Agreements on matters outside the scope of Sections 251 and 252.*** Some of the DOC's complaints go to agreements that have nothing to do with Section 251, and therefore do not implicate Section 252 at all. For example, the DOC cites one provision dealing with the carrier access rates that the CLEC charges Qwest for terminating Qwest's intraLATA toll service. In another case, Qwest is buying non-regulated services from the CLEC.

Qwest believes that none of these provisions require filing with the state Commission under Section 252.

Matters in Minnesota are moving on a fast track. Qwest and the DOC asked the Minnesota PUC to resolve this issue on an expedited basis, and the Commission has now agreed to do so. This is also an important issue for Washington, and other states, as well. Section 252 is a national standard, and all states have an interest in seeing that it is not misinterpreted by any party.

Qwest takes its obligations under the Act very seriously. We are always willing to enter into good faith negotiations with CLECs on business issues of interest and concern to them which may include the negotiation and accommodation of a full range of concerns by Qwest wholesale customers, large and small. Qwest also respects the proprietary information of its customers. The Telecommunications Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved by the Commission. But an overbroad reading of Section 252 would interfere with the incentives and ability of parties to reach agreement in areas outside the actual scope of the Act.

Qwest has taken strong exception to the DOC's allegations that it has discriminated against other CLECs. Qwest has provided all CLECs with the same basic rates, terms and

conditions of interconnection, as required by Section 251. Qwest has met its obligations under Section 251 on a materially equal basis, leaving room for the inevitable differences among its wholesale customers with respect to administrative process. Similarly, Qwest does not violate Section 251 non-discrimination provisions when it settles disputes with CLECs on terms satisfactory to them, allowing the CLEC and Qwest to avoid the uncertainties and delays of litigation.

The Minnesota Commission soon will be holding a hearing to address the DOC's claims. Meanwhile, Qwest is providing in Washington copies of the agreements identified by the Minnesota DOC that involve CLECs operating in Washington. These agreements fall into two categories. One set of contracts is no longer in effect; they are only matters of historical interest at this point (Attachment A). The second set of agreements is in effect today, and Qwest is submitting them as "conditional" interconnection agreements (Attachment B).¹ In addition, if the Commission requests, Qwest will provide its full analysis as presented to the Minnesota Commission as to why these agreements are not required to be filed.

These agreements are submitted with the consent of the other parties to the agreements. Should the Commission determine that the agreements fall within the scope of Section 252 – and Qwest submits they do not – then those agreements are submitted for approval as interconnection agreements in Washington. I want to reemphasize that Qwest strongly believes that it made correct legal determinations, in good faith, on whether these agreements had to be filed for Commission approval.

Please contact me if you have any further inquiries about these matters.

Very truly yours,

Theresa Jensen
Director
Washington Regulatory Affairs

TJ/llw
Enclosures

¹ One provision of the ATI agreement, which is marked as Exhibit 1, is still in effect. Thus, Attachment B includes the one provision from the ATI agreement that is still in effect.

ATTACHMENTS FOR MARCH 15, 2002
LETTER ADDRESSED TO CAROLE WASHBURN
RE: QWEST AGREEMENTS WITH CLECS
FROM THERESA JENSEN, DIRECTOR, REGULATORY

| EXHIBIT NO. | COMPANY NAME | TITLE OF DOCUMENT | DATE OF DOCUMENT | REMARKS |
|--------------|---|---|--|---|
| Attachment A | | | | |
| 1 | Advanced Telecommunications, Inc.(ATI) | Stipulation between ATI and U S WEST | March 2, 2000 | Re: Docket No. P3009, 3052, 5096, 421, 3017/PA-11-1192 |
| 2 | Eschelon Telecom, Inc. | Trial Agreement between QWEST and Eschelon | Effective May 1, 2000 | Contains: Attachment 1 & Attachment 2 |
| 3 | Eschelon | Agreement - QWEST & Eschelon | November 15, 2000 | Agreement concerning: Escalation procedures and business solutions |
| 4 | ATI, QWEST, Eschelon Telecom, Inc. | Amendment to Stipulation | Agreement will be executed as of November 15, 2000 | Amendment adds terms to the Stipulation between ATI and U S WEST dated February 28, 2000. |
| 5 | Eschelon | Correspondence to Eschelon regarding: Status of Switched Access Minute Reporting | July 3, 2001 | |
| 6 | Eschelon | QWEST/Eschelon Implementation Plan | Signed & dated: July 31, 2001 | Contains: Attachment 1 Attachment 2 Attachment 3 |
| Attachment B | | | | |
| 9 | U S WEST Communications, Inc. and McLeodUSA, Inc. | Billing Settlement Agreement | April 28, 2000 | |
| 10 | McLeodUSA | Correspondence to McLeodUSA regarding: Escalation procedures and business solutions | October 26, 2000 | |

ATTACHMENTS ARE MARKED
NONPUBLIC DOCUMENT
CONTAINS TRADE SECRET DATA